

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

WELLS FARGO BANK, N.A.,

Plaintiff,

vs.

YOEL INY, et al.,

Defendants.

Case No. 2:13-cv-01561-MMD-NJK

ORDER DENYING MOTION TO  
 QUASH SUBPOENAS AND MOTION  
 FOR PROTECTIVE ORDER  
 (Docket Nos. 57 and 58)

Pending before the Court are Defendants' Motion to Quash Subpoenas and Motion For Protective Order, filed on April 1, 2014. Docket Nos. 57 and 58. For the reasons stated below, the motions are **DENIED** without prejudice.

**I. BACKGROUND**

This case involves various fraudulent conveyance causes of action brought by Plaintiff Wells Fargo. Plaintiff alleges that Defendants Yoel and Tikva Iny, the Y&T Iny Family Trust, Noam and Rachel Schwartz, and the Noam Schwartz Trust (collectively, "Guarantors") are the guarantors of two loans from Plaintiff which have matured and not been repaid. *See* Compl. ¶ 18 (Docket No. 1). Plaintiff maintains that the Guarantors initiated fraudulent transfers to the other named Defendants in this case. *See* Pl.'s Opp'n to Defs.' Obj. to the Disc. Plan and Sched. Order and Mot. to Stay Disc., at 2 (Docket No. 55). Plaintiff brings claims for fraudulent conveyance of property, fraudulent conveyance of cash and securities, and fraudulent transfer of property. *See, e.g.,* Compl. at 6-13. Plaintiff seeks to recover damages, including attorneys' fees and costs, and seeks to void and set aside certain stock transfers. *Id.*

The pending matters before the Court relate to Plaintiff's subpoenas served on several banks and financial institutions seeking financial records. Defendants object to those subpoenas. Defendants filed the instant motions to quash those subpoenas and for a protective order only a few days prior to the

1 deadline for the banks to respond to them. Docket Nos. 57 and 58.

## 2 **II. ANALYSIS**

3 The Court's initial inquiry regarding a motion for protective order is whether the movant made  
4 adequate meet and confer efforts. Federal Rule of Civil Procedure 26(c)(1) requires that "the motion  
5 must include a certification that the movant has in good faith conferred or attempted to confer with other  
6 affected parties in an effort to resolve the dispute without court action." Similarly, Local Rule 26-7(b)  
7 provides that "[d]iscovery motions will not be considered unless a statement of the movant is attached  
8 thereto certifying that, after personal consultation and sincere effort to do so, the parties have not been  
9 able to resolve the matter without Court action."

10 Judges in this District have previously held that "personal consultation" means the movant must  
11 "personally engage in two-way communication with the nonresponding party to meaningfully discuss  
12 each contested discovery dispute in a genuine effort to avoid judicial intervention." *ShuffleMaster, Inc.*  
13 *v. Progressive Games, Inc.*, 170 F.R.D. 166, 171 (D. Nev. 1996). The consultation obligation  
14 "promote[s] a frank exchange between counsel to resolve issues by agreement or to at least narrow and  
15 focus matters in controversy before judicial resolution is sought." *Nevada Power v. Monsanto*, 151  
16 F.R.D. 118, 120 (D. Nev. 1993). To meet this obligation, parties must "treat the informal negotiation  
17 process as a substitute for, and not simply a formal prerequisite to, judicial review of discovery  
18 disputes." *Id.* This is done when the parties "present to each other the merits of their respective  
19 positions with the same candor, specificity, and support during the informal negotiations as during the  
20 briefing of discovery motions." *Id.* To ensure that parties comply with these requirements, movants  
21 must file certifications that "accurately and specifically convey to the court who, where, how, and when  
22 the respective parties attempted to personally resolve the discovery dispute." *ShuffleMaster*, 170 F.R.D.  
23 at 170.

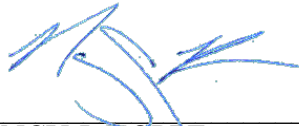
24 The declaration and exhibits attached to the motions provide that, on March 21, 2014, counsel  
25 for Defendants sent an email to counsel for Plaintiff, which states that the email is to serve as  
26 "Defendants' attempt to meet and confer regarding the subpoena that was served by Wells Fargo on  
27 Bank of Nevada." Docket No. 57-1 at 4, 8. The declaration further states that Plaintiff's counsel  
28 responded by email, but that the email did not resolve all discovery issues. *Id.*, at 4. Therefore,

1 according to the declaration, Defendants' counsel sent another email to Plaintiff's counsel on March 25,  
2 2014, asking if the parties could speak on the telephone. *Id.* On March 26, 2014, Defendants' counsel  
3 again sent written correspondence to Plaintiff's counsel "setting forth Defendants' objections regarding  
4 the Subpoenas and requesting that Plaintiff agree" to certain conditions, including the entry of a  
5 stipulated protective order. *Id.*, at 5. Defendants' counsel then attempted to call Plaintiff's counsel;  
6 Plaintiff's counsel left a return voice message stating he was starting trial, and could speak after the trial;  
7 and Defendants' counsel left another voice message for Plaintiff's counsel. *Id.* According to the  
8 declaration, the parties were never able to personally speak prior to the filing of the instant motion. *Id.*,  
9 at 6. The exchange of letters or emails regarding discovery is not a sufficient meet and confer. *See, e.g.,*  
10 *ShuffleMaster*, 170 F.R.D. at 172.<sup>1</sup>

11 Defendants' pending motions suffer from a threshold defect in that they do not contain a proper  
12 meet and confer certification. Accordingly, the Motion to Quash Subpoenas, Docket No. 57, and the  
13 Motion for Protective Order, Docket No. 58, are hereby **DENIED** without prejudice.

14 IT IS SO ORDERED.

15 DATED: April 9, 2014.



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18 NANCY J. KOPPE  
United States Magistrate Judge

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It does not appear to the Court as if Plaintiff's counsel refused to engage in a meet and confer despite the efforts of Defendants' counsel. Rather, it appears he was preparing for and engaged in trial during this period of time. *See* Docket No. 57-1, at 11.